

¹ The record contains the deposition of Ronald Torres taken January 24, 2012. The deposition is not identified as either a discovery deposition or an evidentiary deposition and has not been listed in the Division's record as being part of the record. This Board Member has not reviewed the deposition in deciding this appeal.

ISSUES

Respondent requests review of the ALJ's April 9, 2012, Order Referring Claimant for Independent Medical Evaluation, arguing that claimant's injuries did not arise out of and in the course of his employment and, further, that claimant failed to provide timely notice of his alleged on-the-job injury.

Claimant asks that the ALJ's Order Referring Claimant for Independent Medical Evaluation be affirmed.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based upon the record presented to date, the undersigned Board Member makes the following findings of fact and conclusions of law.

Claimant testified he injured his left knee on November 19, 2011, while carrying a heavy door up some stairs while working for respondent. He said he told his boss, Kurt Johnson, he had hyperextended his knee carrying the door. Mr. Johnson denied claimant was carrying doors up stairs on November 19, 2011, and also denied he received notice of claimant's work-related accident until December 24, 2011, when he received a letter from claimant's attorney.

Claimant filed an application for preliminary hearing seeking medical treatment with Dr. Do and payment of medical bills. After the preliminary hearing on April 6, 2012, the ALJ ordered claimant to be evaluated by Dr. Do as an independent medical examiner.

K.S.A. 2011 Supp. 44-516(a) states in relevant part:

In case of a dispute as to the injury, the director, in the director's discretion, or upon request of either party, may employ one or more neutral health care providers, not exceeding three in number, who shall be of good standing and ability. The health care providers shall make such examinations of the injured employee as the director may direct. The report of any such health care provider shall be considered by the administrative law judge in making the final determination.

The ALJ's April 9, 2012, Order does not award claimant medical treatment or any other form of preliminary relief. The ALJ made no findings concerning compensability, *i.e.*, whether claimant sustained an accident injury that arose out of or in the course of his employment or whether claimant gave respondent timely notice. The Order merely orders an IME to be conducted by Dr. Do, a neutral physician. Thus, the ALJ's Order is neither a preliminary hearing order entered pursuant to K.S.A. 2011 Supp. 44-534a, nor is it a final award. The Board has previously held on numerous occasions that an order for an IME

is an interlocutory order.² K.S.A. 2011 Supp. 44-551(i)(1) limits the Board's jurisdiction to review "final orders, awards, modifications of awards, or preliminary awards under K.S.A. 44-534a and amendments thereto made by an administrative law judge" The ALJ's Order Referring Claimant for Independent Medical Evaluation is interlocutory in nature.

Respondent's request for Board review of the ALJ's Order is premature. The Order is not a final order that can be reviewed at this stage of the proceedings pursuant to K.S.A. 2011 Supp. 44-551. That statute limits the Board's jurisdiction to review of "final orders." It does not grant authority to review interlocutory orders. Furthermore, the Order does not concern an issue that came before the ALJ pursuant to the preliminary hearing statute, K.S.A. 2011 Supp. 44-534a, as preliminary hearing orders are limited to issues concerning the furnishing of medical treatment, the payment of temporary total disability compensation, or the payment of temporary partial disability compensation.

When the record reveals a lack of jurisdiction, the Board's authority extends no further than to dismiss the action.³

WHEREFORE, it is the finding, decision and order of this Board Member that respondent's request to review Administrative Law Judge Brad E. Avery's April 9, 2012, Order Referring Claimant for Independent Medical Evaluation is dismissed for lack of jurisdiction.

IT IS SO ORDERED.

Dated this _____ day of May, 2012.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

² See, e.g., *Scott v. Total Interiors*, No. 244,761, 2000 WL 1134444 (Kan. WCAB July 28, 2000); *Kitchen v. Luce Press Clippings, Inc.*, No. 228,213, 1999 WL 288895 (Kan. WCAB Apr. 2, 1999).

³ See *State v. Rios*, 19 Kan. App. 2d 350, Syl. ¶ 1, 869 P.2d 755 (1994).

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Brad E. Avery, Administrative Law Judge